

VIRGIN ISLANDS

BVI BUSINESS COMPANIES (AMENDMENT) ACT, 2005

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Amendment of reference.
3. Section 6 amended.
4. Section 9 amended.
5. Section 10 amended.
6. Section 12 amended.
7. Section 17 amended.
8. Section 18 amended.
9. Section 20 amended.
10. Section 23 amended.
11. Section 24 amended.
12. Section 28 amended.
13. Section 29 amended.
14. Section 32 amended.
15. Section 35 amended.
16. Section 36 amended.
17. Section 39 amended.
18. Section 40A inserted.
19. Section 41 amended.
20. Section 43 amended.
21. Section 44 amended.
22. Section 46 amended.
23. Section 47 amended.
24. Section 54 amended.
25. Section 56 amended.
26. Section 57 amended.
27. Section 59 amended.
28. Section 60 amended.
29. Section 61 amended.
30. Section 63 amended.
31. Section 64 amended.
32. Section 65 amended.
33. Section 66 amended.
34. Section 68 amended.
35. Section 69 amended.
36. Section 76 amended.
37. Section 78 amended.
38. Section 79 amended.
39. Section 80 amended.
40. Section 81 amended.
41. Section 82 amended.
42. Section 83 amended.

Section

43. Section 84 amended.
44. Section 85 amended.
45. Section 89 amended.
46. Section 92 amended.
47. Section 100 amended.
48. Section 102 amended.
49. Section 103 amended inserted.
50. Section 106 amended.
51. Section 107 amended.
52. Section 109 amended.
53. Section 110 amended.
54. Section 112 amended.
55. Section 113 amended.
56. Section 114 amended.
57. Section 115 amended.
58. Section 118 amended.
59. Insertion of section 118A.
60. Section 120 amended.
61. Section 122 amended.
62. Section 124 amended.
63. Section 125 amended.
64. Section 126 amended.
65. Section 130 amended.
66. Section 131 amended.
67. Section 132 amended.
68. Section 133 amended.
69. Section 149 amended.
70. Section 151 amended.
71. Section 156 amended.
72. Section 157 amended.
73. Section 159 amended.
74. Section 160 amended.
75. Section 165 amended.
76. Section 166 amended.
77. Section 167 amended.
78. Section 170 amended.
79. Section 171 amended.
80. Section 173 amended.
81. Section 174 amended.
82. Section 177 amended.
83. Section 179 amended.
84. Insertion of section 179A.
85. Section 180 amended.
86. Section 181 amended.
87. Section 182 amended.
88. Section 184 amended.
89. Insertion of Part XA.
90. Section 168 amended.
91. Section 196 amended.
92. Section 198 amended.

Section

- 93.** Section 199 amended.
- 94.** Section 202 amended.
- 95.** Section 205 amended.
- 96.** Insertion of section 207A.
- 97.** Section 208 amended.
- 98.** Section 213 amended.
- 99.** Section 217 amended.
- 100.** Section 218 amended.
- 101.** Section 223 amended.
- 102.** Section 224 amended.
- 103.** Section 226 amended.
- 104.** Section 228 amended.
- 105.** Insertion of section 228A.
- 106.** Section 230 amended.
- 107.** Section 233 amended.
- 108.** Section 235 amended.
- 109.** Section 236 amended.
- 110.** Amendment of Schedule 1.
- 111.** Repeal and replacement of Schedule 2.
- 112.** Transitional provisions.

(c) publish the striking off of the company in the *Gazette*.

(4A) A certificate of discontinuance issued under subsection (4) is prima facie evidence that

(a) all the requirements of this Act in respect of the continuation of a company under the laws of a foreign jurisdiction have been complied with; and

(b) the company was discontinued on the date specified in the certificate of discontinuance.”.

89. The principal Act is amended by inserting after Part X the following Part:

Insertion of Part XA.

“PART XA

MEMBERS’ REMEDIES

Interpretation for this Part.

184A. In this Part, “member”, in relation to a company, means

- (a) a shareholder or a personal representative of a shareholder;
- (b) a guarantee member of a company limited by guarantee; or
- (c) an unlimited member of an unlimited company.

Restraining or compliance order.

184B. (1) If a company or a director of a company engages in, or proposes to engage in, conduct that contravenes this Act or the memorandum or articles of the company, the Court may, on the application of a member or a director of the company, make an order directing the company or director to comply with, or restraining the company or director from engaging in conduct that contravenes, this Act or the memorandum or articles.

(2) If the Court makes an order under subsection (1), it may also grant such consequential relief as it thinks fit.

(3) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it could make as a final order under that subsection.

Derivative
actions.

184C. (1) Subject to subsection (3), the Court may, on the application of a member of a company, grant leave to that member to

- (a) bring proceedings in the name and on behalf of that company; or
- (b) intervene in proceedings to which the company is a party for the purpose of continuing, defending or discontinuing the proceedings on behalf of the company.

(2) Without limiting subsection (1), in determining whether to grant leave under that subsection, the Court must take the following matters into account

- (a) whether the member is acting in good faith;
- (b) whether the derivative action is in the interests of the company taking account of the views of the company's directors on commercial matters;
- (c) whether the proceedings are likely to succeed;
- (d) the costs of the proceedings in relation to the relief likely to be obtained; and
- (e) whether an alternative remedy to the derivative claim is available.

(3) Leave to bring or intervene in proceedings may be granted under subsection (1) only if the Court is satisfied that

- (a) the company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
- (b) it is in the interests of the company that the conduct of the proceedings should not be left

to the directors or to the determination of the shareholders or members as a whole.

(4) Unless the Court otherwise orders, not less than 28 days notice of an application for leave under subsection (1) must be served on the company and the company is entitled to appear and be heard at the hearing of the application.

(5) The Court may grant such interim relief as it considers appropriate pending the determination of an application under subsection (1).

(6) Except as provided in this section, a member is not entitled to bring or intervene in any proceedings in the name of or on behalf of a company.

Costs of
derivative
Action.

184D. (1) If the Court grants leave to a member to bring or intervene in proceedings under section 184C, it shall, on the application of the member, order that the whole of the reasonable costs of bringing or intervening in the proceedings must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

(2) If the Court, on an application made by a member under subsection (1), considers that it would be unjust or inequitable for the company to bear the whole of the reasonable costs of bringing or intervening in the proceedings, it may order

- (a) that the company bear such proportion of the costs as it considers to be reasonable; or
- (b) that the company shall not bear any of the costs.

Powers of Court
when leave
granted under
section 184C.

184E. The Court may, at any time after granting a member leave under section 184C, make any order it considers appropriate in relation to proceedings brought by the member or in which the member intervenes, including

- (a) an order authorising the member or any other person to control the proceedings;
- (b) an order giving directions for the conduct of the proceedings;